IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Raav Ji Vs. State of Rajasthan

S.B.CR. MISC. BAIL APPLICATION NO.5043/2007

DATE OF ORDER :: November 13, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.P.R.Mehta, for the petitioner.
Mr.Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and the challan papers more particularly the statement of injured Narayan and his injury report.

It is contended by learned counsel for the petitioner that none of the injuries suffered by injured Narayan is dangerous to life and, therefore, the offence under section 307 I.P.C. is not made out.

On careful perusal of the statement of the injured and his injury report, it appears that the petitioner caused the repeated injuries by sharp edged deadly weapon. The injured suffered as many as 4 incised injuries, out of which, injury No.1 is on vital part i.e. forehead and injuries No.2 and 3 resulted in fracture. The Doctor, who examined the injured, has noticed that the condition of the patient is very poor and he has been referred to higher centre i.e. RNT Medical College, Udaipur.

Hon'ble Supreme Court in Girja Shankar Vs. State of U.P., JT 2004 (2) SC 140, observed that for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. The Apex Court further held as under:-

> "It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the

> death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section."

In Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843, the Hon'ble Supreme Court held that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307 IPC. The same view has been reiterated by the Hon'ble Supreme Court in State of Maharashtra Vs. Balram Bama Patil & ors., (1983) 2 SCC 28, wherein the Hon'ble Apex Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In Bappa alias Bapu Vs. State of Maharashtra, AIR 2004 SC 4119, the accused along with victim had gone to cinema to witness movie and were coming back by bicycle. Suddenly accused got down from bicycle, stabbed the victim on his stomach and back and pressed his neck. It was contended that keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC. While affirming the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 IPC if there is present an intent couple with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Vasant Vithu Jadhav Vs. State of Maharashtra, (2004) 9 SCC 31, the accused opened fire from a gun from a very close range at victim when he was sleeping on a cot. The shot hit the springs of the cot. The bullet broke into pieces and three such pieces struck the victim. Upholding the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In R. Prakash Vs. State of Karnataka, (2004) 9 SCC 27, the Hon'ble Supreme Court observed that intent coupled with some overt act in execution thereof is sufficient for constituting an offence under Section 307 IPC. The Apex Court further held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution

> thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

Thus, in view of the law laid down by Hon'ble Supreme Court, for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted and it is sufficient to justify a conviction under Section 307 IPC if there is present an intent coupled with some overt act in execution thereof.

In the instant case, repeated injuries have been caused by sharp edged weapon to injured Narayan, out of which one injury has been caused on vital part i.e. forehead of the injured by deadly weapon and therefore, at this stage, prima-facie it cannot be said that the injuries caused by the petitioner were not with

such intention or knowledge and under such circumstances that if he by his act caused death, he would be guilty of murder. In the circumstances therefore, in my view, it is not a fit case to grant bail to the petitioner under section 439 Cr.P.C.

The bail application filed by the petitioner under section 439 Cr.P.C. is, therefore, dismissed.

(H.R.PANWAR),J.

m.asif/-